Sample Orders § 40.41

40.4 Class Actions Orders

- .41 Order Certifying Class 763
- .42 Order Setting Hearing on Proposed Class Settlement 765
- .43 Combined Certification and Proposed Settlement Order 766
- .44 Order Approving Settlement/Claims Procedure 768

Note: These class action forms have been adapted from antitrust litigation for illustrative purposes and may be adapted for other litigation by appropriate changes.

40.41 Order Certifying Class

[ca	ption]
Oro	der No
	In accordance with the findings and conclusions contained in the Opinion [omit] filed concurrently with this order, it is, ORDERED:
1.	Class Certification. Civil Action No, styled shall be maintained as a class action or
	behalf of the following class of plaintiffs:
	[Describe class in objective terms to the extent possible. For example, "All persons and entities throughout the United States and its territories (other than widget manufacturers and entities owned or controlled by them) that, since [date], have purchased widgets directly from any of the defendants or from any other widget manufacturer."]
	with respect to the following cause(s) of action:
	[Describe class claims as precisely as possible. For example, "Any claims for damages or injunctive relief under federal antitrust laws premised upon an alleged conspiracy among the defendants and other widget manufacturers to restrict competition in the manufacture, distribution, and sale of widgets by setting the minimum prices charged for widgets after [date]"]
2.	Class Representative; Class Counsel. Subject to further order of the court, [A.B. Co.] is designated as class representative and [X.Y.] is designated as counsel for the class.
3.	Notice. ¹
	(a) Class counsel shall by

plain language and approved by the court. For illustrative examples of the
form of such notices, see the Federal Judicial Center's Web site (www.fjc.gov)
and go to the "Class Action Notices" page. In addition to class members
identified through an examination of defendants' records, this notice will also
be mailed to persons who are members of [National Widget Dealers Trade
Association].
Class counsel shall cause to be published in the

- (b) Class counsel shall cause to be published in the _______ by _____ [date] _____, a notice in substantially the same style and format as the illustrative summary notices posted on the "Class Action Notices" page of the Federal Judicial Center's Web site (www.fjc.gov).
- 4. *Exclusion*. The notice to class members must inform them as to how they may exclude themselves from the class.
- 5. *List of Class Members*. Class counsel will file with the clerk by _____ [date]____, an affidavit identifying the persons to whom notice has been mailed and who have not timely requested exclusion.

Dated:		
	United States District Judge	

Note:

1. See supra section 21.311.

Sample Orders § 40.42

40.42 Order Setting Hearing on Proposed Class Settlement

aption]
der No
The court having preliminarily reviewed the proposed settlement of this action, it is RDERED:
<i>Proposed Settlement.</i> The proposed settlement between the plaintiff class and the defendants appears to be within the range of reasonableness and accordingly shall be submitted to the class members for their consideration and for a hearing under Fed. R. Civ. P. 23(e).
Hearing. A hearing shall be held in Courtroom, United States Courthouse, at a.m./p.m., on, to consider whether the settlement is fair, reasonable, and adequate and should receive the court's final approval.
(a) Objections by class members to the proposed settlement will be considered if filed in writing with the clerk on or before [date]
(b) At the hearing, class members may be heard orally in support of or in opposition to the settlement, provided such persons file with the clerk by <u>[date]</u> , a written notification of their desire to appear personally, indicating (if in opposition to the settlement) briefly the nature of the objection.
(c) Counsel for the class and for the defendants should be prepared at the hearing to respond to objections filed by class members and to provide other infor- mation, as appropriate, bearing on whether or not the settlement should be approved.
Notice. The parties to the proposed settlement shall by [date], cause to be mailed in the name of the clerk, by first class mail, postage prepaid, to members of the class [who did not timely elect to be excluded from litigation] a notice in plain language and in substantially the form of the Federal Judicial Center's Illustrative Notices, which can be found on the Class Action Notices page of the Center's Web site (www.fjc.gov). [Notice of the proposed settlement (and of the rights of class members to object to or opt out of the proposed settlement) shall also be given by publication in a summary form as illustrated on the Class Action Notices page of the Center's Web site.
The notice should include information about attorney fees sought by attorneys for the class. ¹
ted:
United States District Judge
te: 1

40.43 Combined Certification and Proposed Settlement Order

rc	ler No
	in accordance with the findings and conclusions contained in the Opinion [omit filed concurrently, it is ORDERED:
•	Class Certification. ¹ Civil Action No, styled, shall be maintained as a class action on
	behalf of the following class of plaintiffs:
	[Describe class in objective terms to the extent possible. For example, "All persons and entities throughout the United States and its territories (other than [widget] manufacturers and entities owned or controlled by them) that, between [date], and [date], have purchased [widgets] directly from any of the defendants or any other [widget] manufacturer."]
	with respect to the following cause(s) of action:
	[Describe class claims as precisely as possible. For example, "Any claims for damages or injunctive relief under federal antitrust laws premised upon an alleged conspiracy among [widget] manufacturers to restrict competition in the manufacture, distribution, and sale of [widgets] by setting the minimum prices charged for [widgets] between[date], and[date]"]
	<i>Class Representative; Class Counsel.</i> [A.B. Co.] is designated as class representative and [X.Y.] is designated as counsel for the class.
	<i>Exclusion</i> . The notice to class members must inform them as to how they may exclude themselves from the class.
	<i>Proposed Settlement</i> . The proposed settlement between the plaintiff class and the defendants appears, upon preliminary review, to be within the range of reason ableness and accordingly shall be submitted to the class members for their consideration and for a hearing under Federal Rule of Civil Procedure 23(e). The term of the settlement are as follows:
	[describe terms in clear, nontechnical manner]
•	Hearing. A hearing shall be held in Courtroom, United States Courthous, at a.m./p.m., on[date], to conside whether the settlement should be given final approval.

Sample Orders \$ 40.43

	(a)	Objections by class members (who do not timely elect to exclude themselves from the class) to the proposed settlement should be considered if filed in writing with the clerk on or before [date]
	(b)	At the hearing, class members (who do not timely elect to exclude themselves from the class) may be heard orally in support of or in opposition to the settlement, provided such persons file with the clerk by [date], a written notification of the desire to appear personally, indicating (if in opposition to the settlement) briefly the nature of the objection.
	(c)	Counsel for the class and for the defendants should be prepared at the hearing to respond to objections filed by such class members and to provide other information, as appropriate, bearing on whether or not the settlement should be approved.
6.	Not	ice
	(a)	Class counsel shall by
		In addition to class members identified through an examination of defendants' records, this notice will also be mailed to persons who are members of [National Widget Dealers Trade Association].
	(b)	Class counsel shall cause to be published in the[publication] by[date], a notice in substantially the same style and format as the illustrative summary notices posted on the Class Action Notices page of the Federal Judicial Center's Web site (www.fjc.gov). A copy of a summary publication notice using asbestos litigation as an example (as it appeared on May 5, 2003) is reproduced as Attachment B.
7.	dav	of Class Members. Class counsel will file with the clerk by[date], an affiit identifying the persons to whom notice has been mailed and who have not ely requested exclusion.
Dat	ed·	
Dat	-u	United States District Judge

Attachments A & B: [See full asbestos notice and publication notice on the FJC Web page (www.fjc.gov).]

Notes:

1. When the parties propose a settlement before a class has been certified, the court should ordinarily determine whether the proposed class satisfies the requirements of Federal Rules of Civil Procedure 23(a) and (b) before directing notice to be sent to the class. See supra section 21.632.

40.44 Order Approving Settlement/Claims Procedure

[ca	ption	
Ore	der N	
		cordance with the findings and conclusions contained in the Opinion [omit-d concurrently, it is ORDERED:
1.		proval of Settlement. The settlement is, after hearing, determined to be fair, sonable, and adequate. It is, therefore, approved.
2.	tain \$ the tion	ard of Fees and Expenses. In accordance with the findings and conclusions conted in the Opinion [omitted], [X.Y.] is awarded \$ as compensation and as reimbursement for expenses, to be paid [from the settlement fund] [by defendants]. [Application for an award from the settlement fund of addital fees and expenses in connection with further proceedings, including adhistration and distribution of the settlement fund, may be made to the court.]
3.	Adr	ninistration and Distribution of Settlement Fund
	(a)	<i>Investment.</i> [After payment of counsel fees and expenses as awarded by the court,] the settlement fund shall, pending distribution to class members, be held in interest-bearing investments to be approved by the court from time to time.
	(b)	Allocation. The [net] settlement fund shall be allocated among the class members in proportion to their "qualified purchase," which means the net price (after discounts and allowances) paid by them to [widget] manufacturers for [widgets] from[date], to[date]
	(c)	Claims; proof of purchases. Unless extended by the court (or the special master) class members shall have until [date], to submit claims detailing, with appropriate supporting proof, their "qualified purchases."
	(d)	Special master. ² is appointed as special master under Fed. R. Civ. P. 53 to review, tabulate, and (as appropriate) audit claims made by class members. The special master shall establish procedures to resolve disputes regarding eligibility of persons to be members of the class and regarding the amount of "qualified purchases" by such persons. The findings and conclusions of the special master identifying the class members, their respective "qualified purchases," and their allocable shares of the settlement fund shall be reported to the court under Fed. R. Civ. P. 53(f) as soon as is practicable. Compensation and expenses of the special master will be paid from the settlement fund in such amount as the court may determine to be fair and reasonable.
	(e)	Distribution. The net settlement fund, with interest, shall be distributed to class members as soon as practicable after the amount to which each member

Sample Orders § 40.44

is entitled has been determined. Any funds remaining after distribution has been completed may be distributed as the court directs.

4. Notice. Class counsel shall by _____ [date] ____, cause to be mailed in the name of the clerk by first class mail, postage prepaid, to members of the class [who did not timely elect to be excluded from litigation] a notice in plain language and in substantially the form of the Federal Judicial Center's Illustrative Notices, which can be found on the Class Action Notices page of the Center's Web site (www.fjc.gov). [Notice of the proposed settlement (and of the rights of class members to object to or opt out of the proposed settlement) shall also be given by publication in a summary form as illustrated on the Class Action Notices page of the Center's Web site.

The notice should include information about attorney fees sought by attorneys for the class.

5.	Reserved Jurisdiction of Court. The court retains jurisdiction over the settlement of
	this case and may enter additional orders to effectuate the fair and orderly ad-
	ministration of the settlement as may from time to time be appropriate, including
	the determination of persons to whom payment should be made in the event of
	death or dissolution and the right to set aside a portion of the net settlement fund
	not exceeding [\$] [
	claims and other contingencies and to determine the appropriate disposition of
	any portion of the reserve not distributed to the class members.

Dated:	
	United States District Judge

Notes:

- 1. This assumes that an application for attorneys' fees was heard concurrently with the hearing on approval of the settlement. A joint hearing is recommended as an efficient and economical way to satisfy the notice requirement of Fed. R. Civ. P. 23(h)(1).
- 2. These sample forms contain provisions generally suitable if a special master is appointed to administer the settlement. In other cases, use of a claims committee or magistrate judge may be appropriate.